

## Exhibit 11 (Part 1)

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE COMMONWEALTH OF	)	
MASSACHUSETTS,	)	Case No. 1:09-cv-11623
	)	
and	)	
	)	
MASSACHUSETTS DEPARTMENT	)	
OF CORRECTION,	)	
	)	
Defendants.	)	
	)	

**SETTLEMENT AGREEMENT**

This action was brought by Plaintiff United States of America against Defendants, the Commonwealth of Massachusetts and the Massachusetts Department of Correction to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended ("Title VII"). This Court has jurisdiction of this action under 42 U.S.C. § 2000e-6 and 28 U.S.C. §§ 1343(a)(3) and 1345.

In light of the Court's Order of March 31, 2011, and Memorandum of Decision of May 4, 2011, and in order to resolve all claims in this matter and to avoid the burden of protracted litigation, the United States and Defendants enter into this Settlement Agreement ("Agreement") and agree to waive hearings and findings of fact and conclusions of law on all remaining issues in the case, subject to the fairness hearings outlined below.

13. “Interested Applicant(s)” refers to any individual who is an Applicant, and who timely submits an Interest in Relief form pursuant to Section VI of this Agreement.

14. “MCOFU” refers to the Massachusetts Correction Officers Federated Union as a collective bargaining representative of COs employed at the MDOC.

15. “New Physical Test” refers to the physical test developed pursuant to Section V of this Agreement.

16. “Operative Final Individual Relief List” refers to the list describing the final determinations of Individual Relief filed by the Parties and approved by the Court, as described more fully in Paragraph 87 of this Agreement.

17. “Preliminarily Eligible for Individual Relief” includes all female applicants for Entry-level CO and CPO positions who failed the Caritas PAT at least once, who meet the requirements of Mass. Gen. Laws ch. 125, § 9, and who are listed in Appendix B or entitled to Delay Hire Relief.

18. “Presumptive Hire Date,” with respect to an Interested Applicant, refers to the first start date of the Academy that would have been available to the Interested Applicant after she first took and failed the Caritas PAT. The Presumptive Hire Date for each Interested Applicant, depending upon when she first took and failed the Caritas PAT, is: (1) September 9, 2007; (2) January 20, 2008; (3) June 1, 2008; (4) October 5, 2008; (5) July 5, 2009; or (6) February 14, 2010.

19. “Priority Hire” or “Priority Hire Relief” refers to hiring preference with Retroactive Seniority, as defined herein, given to female applicants who failed the Caritas PAT, and were not hired at the MDOC as Entry-level COs or CPOs.

have less adverse impact on women than the New Physical Test. Upon request by a Party, the Parties and their contractors shall make themselves available for a telephone conference within fifteen (15) days of such request.

49. Within thirty (30) days of receipt of the written notice set forth in Paragraph 48, the United States shall inform the Commonwealth and the MDOC whether it objects to the proposed change(s) or modification(s). If the United States does not object, the Commonwealth and the MDOC may implement the proposed change(s) or modification(s). If the United States objects to the proposed change(s) or modification(s), and the United States wishes to further pursue the issue with the Court, the Parties shall employ the dispute resolution process set forth in Section VIII herein, but if the dispute is not resolved within sixty (60) days from the notification of the objection by the United States, unless such failure is due solely to the Court's schedule, the Commonwealth and the MDOC, in their sole discretion and at their own risk, may, in the interim, implement the proposed change(s) or modification(s).

## **VI. INDIVIDUAL RELIEF**

### **A. Backpay**

50. Subject to Paragraph 105 below, Defendants shall set aside or otherwise encumber \$736,000 from the Settlement and Judgment Fund or other funds appropriated for this purpose. The monies so set aside or encumbered ("Settlement Fund") shall be distributed by Defendants as provided in Paragraphs 88 and 89 of this Agreement.

51. The Settlement Fund shall be distributed on a pro rata basis to Interested Applicants listed in the Operative Final Individual Relief List, and no Interested Applicant shall receive an individual Backpay amount of more than \$50,000. **Appendix G** represents the

minimum Backpay amount each Interested Applicant shall receive based upon the position to which she applied and her respective Presumptive Hire Date. Using **Appendix G** as a guide, the United States shall determine the individual Backpay amount for which each Interested Applicant is eligible. An Interested Applicant shall not be required to seek Priority Hire Relief or Delay Hire Relief or accept an offer of employment at the MDOC in order to receive Backpay.

52. Defendants shall pay all federal, state or local taxes or contributions that normally are paid by employers and that are due on any Backpay amount paid to an Interested Applicant, including any appropriate employer's contributions to Medicare and the Social Security fund. No such taxes or contributions shall be deducted from the Settlement Fund, any interest that accrues on the Settlement Fund, or any Interested Applicant's Backpay amount.

53. Defendants shall, to the extent required by law, and in accordance with this Agreement, withhold from each Interested Applicant's Backpay amount all appropriate federal and state income taxes, child support payments, tax liens, other required wage garnishments and any other required employee withholdings or deductions, including retirement contributions. For any Interested Applicant, who at the time the Backpay awards are distributed, is employed or has ever been employed by the Commonwealth, or is otherwise eligible to participate in the Massachusetts State Employees Retirement System ("MSERS"), employee contributions will be withheld from her Backpay award. The required employee contribution will be based on the Backpay amount received by the Interested Applicant and not on the salary the Interested Applicant would have earned had she been employed at the MDOC since her Presumptive Hire Date. For any Interested Applicant never employed by the Commonwealth, and who is not

otherwise eligible to participate in the MSERS, no employee contribution will be withheld from the Backpay award. Receipt of a Backpay award does not establish eligibility to participate in the MSERS.

54. As set forth in Paragraphs 53, 55 and 56, final determination – including eligibility for membership, the amount of applicable creditable service related to the Backpay award, the amount of any creditable service subsequently requested, and the extent of and the amount of any additional costs and/or contributions for any retirement benefits shall be made by the Massachusetts State Retirement Board (“MSRB”) in accordance with this Agreement and the applicable statutes, regulations, policies, and terms and conditions established by the MSRB in effect at the time this Agreement is executed. An Interested Applicant must agree to complete any required enrollment forms or other documentation required by the MSRB in order to be eligible for membership and/or creditable service for retirement benefits.

55. For any Interested Applicant receiving Priority Hire Relief or Delay Hire Relief:

a. If the Interested Applicant wishes her creditable service for retirement benefits to be based on her Presumptive Hire Date, she will reimburse the MSRB, before she retires, pursuant to terms and conditions established by the MSRB, for the difference between any employee contribution amount withheld from any Backpay award she receives and the amount that would have been withheld as employee contributions since her Presumptive Hire Date based on the salary she would have earned had she been employed with the MDOC; or

b. If the Interested Applicant chooses not to reimburse the MSRB for this difference between any employee contribution amount withheld from any Backpay award